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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHRISTOPHER LEE DUNN,
Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH 25,
INCLUSIVE.

Defendants.

CASE NO.: BC 417928
Complaint Filed: July 28, 2009

Assigned to: Hon. Alan S. Rosenfeld, Judge
Dept: 31

PLAINTIFF CHRISTOPHER LEE DUNN'S
NOTICE OF MOTION AND MOTION TO
TAX COSTS

DATE: June 20, 2011
TIME: 8:30 a.m.
DEPT.: 31

TO ALL DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on June 20, 2011 at 8:30 a.m., or as soon thereafter as
counsel may be heard in Department 31 of the above-entitled Court, located at 111 North Hill Street,
Los Angeles, California 90012, Plaintiff Christopher Lee Dunn will and hereby does move the Court
for an order to tax costs as set forth in the Memorandum of Costs (Worksheet) filed and served by
Defendant BURBANK POLICE DEPARTMENT, including the Burbank Police Department
("Defendant") in the amount of \$18,867.70 on the grounds that the deposition costs are inflated and

1 are unlikely to have been actually paid by Defendant. Pursuant to *Code of Civil Procedure* section
2 1033.5 they should be either struck in their entirety or taxed as the Court deems appropriate.

3 This Motion is based upon this Notice of Motion, the attached Memorandum of Points and
4 Authorities, the Declaration of Solomon E. Gresen, the papers and records on file in this action, and
5 upon such other and further documentary evidence as may be presented to the Court before and at
6 the time of the hearing on this motion.

7
8 DATED: May 18, 2011

LAW OFFICES OF RHEUBAN & GRESEN

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10 By: India S. Thompson
11 India S. Thompson
12 Attorneys for Plaintiff Christopher Lee Dunn
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Christopher Lee Dunn ("Plaintiff"), the plaintiff in this action asserted causes of action
4 related to employment discrimination and violation of his procedural due process rights in his
5 capacity as a police officer for the City of Burbank. Numerous depositions were taken by Plaintiff
6 and Defendant. Nearly all were also videographed. A motion for summary judgment was filed by
7 Defendant and it was granted. Judgment was entered on April 27, 2011. A Memorandum of Costs
8 was served (and presumably filed) on May 3, 2011.

9
10 II. GOVERNING LAW

11 Code of Civil Procedure section 1033.5 governs what costs are and are not allowable to a
12 prevailing party under section 1032. The prevailing party's allowable costs are set forth in
13 subdivision (a) of section 1033.5. Costs not allowable to the prevailing party are set forth at
14 subdivision (b) of section 1033.5. Section 1033.5(c) provides that "(c) Any award of costs shall be
15 subject to the following: (1) Costs are allowable if incurred, whether or not paid. (2) Allowable
16 costs shall be reasonably necessary to the conduct of the litigation rather than merely convenient or
17 beneficial to its preparation."

18 Rule 3.1700(b)(2) of the California Rules of Court provides that a motion to tax costs "must
19 refer to each item objected to by the same number and appear in the same order as the corresponding
20 cost item claimed on the memorandum of costs and shall state why the item is objectionable."

21 The following are the items in the Defendant's most recent Memorandum of Costs that
22 should be disallowed and the reasons why the items are objectionable.

23
24 III. SUFFICIENT EVIDENCE EXISTS THAT THE COST OF DEPOSITIONS CLAIMED
25 BY DEFENDANT IS INFLATED.

- 26 1. **The Deposition Costs for Steve Karagiosian which total \$2,810.20 Should Be Struck**
27 **Because They Were Not Necessary to the Prosecution of This Case.**

28 Depositions, including related videography and travel expense, are generally allowable. Civ.

1 Proc. Code §1033.5(a)(3). However, Steve Karagiosian's testimony was not "necessary" as required
2 under Code of Civil Procedure Sections 1033.5(a)(3) and (c)(2) and should be disallowed.

3 As the Court may already be aware. Various current and former Burbank police officers,
4 including Christopher Dunn and Steve Karagiosian, sued Defendant for employment discrimination.
5 This law firm represent the plaintiffs in both actions. Throughout the litigation of both cases, it was
6 apparent that counsel for Defendant in this case, and counsel for Defendant in the other action
7 (*Rodriguez et al. v. City of Burbank et al.*, LASC Case No. BC 414602 in Department 37)
8 communicated with each other and coordinated their efforts on a continual basis. Moreover, the
9 Burbank City Attorney's Office was actively involved in both cases. Deputy City Attorney Carol
10 Humiston is an active participant and counsel of record on both cases. Declaration of Solomon E.
11 Gresen ("Gresen Decl."), ¶¶1, 2.

12 Steve Karagiosian is one of the plaintiffs in the Department 37 action. His claims are
13 centered around (a) acts of harassment based on his ethnicity and national origin (Armenian) and (b)
14 denial of opportunities for advancement. Gresen Decl., ¶3. The events and circumstances of these
15 claims all occurred *after* Plaintiff's placement on administrative leave. This leads to the following
16 query: Why was it necessary to depose Steve Karagiosian on *three* occasions?

17 In January 2010, the Burbank Police Department began an investigation of Karagiosian
18 concerning his conduct during the course of the investigation of a robbery in Burbank. Rather than
19 go through the formal investigative interview process with Karagiosian with all of its attendant
20 police officer due process requirements, arrangements were made to depose Karagiosian in the Dunn
21 action. Few, if any, questions had anything to do with *this* action. Karagiosian was not a close friend
22 of Dunn. Karagiosian never worked for or with Dunn on any assignments. This deposition was not
23 necessary to the litigation involving Christopher Dunn. Nearly all questions during this three day
24 period concerned events that post-dated the administrative leave and termination of Christopher
25 Dunn. Gresen Decl., ¶3. The transcripts of the three Karagiosian depositions are lodged in support
26 of this Motion.

27 Therefore, the entire costs for the Karagiosian depositions (including \$1,549.00 in
28 videography costs) should be stricken.

2. The Cost of Videotapes in the amount of \$17,426.05 should be disallowed.

As their Memorandum of Costs indicates, numerous depositions were conducted by Defendant. However, Defendants' counsel informed Solomon Gresen, counsel for Plaintiff as well as the other plaintiffs in the *Rodriguez* case, that although the City of Burbank engaged a videographer for each of the listed depositions, it later elected to refrain from the purchase of any of the depositions. Gresen Decl., ¶4.

Defendant is only entitled to costs *incurred*, whether or not paid. The videotaping costs listed include both the cost of the videographer's time and the cost of the video. If Defendant did not actually purchase the videos, then no cost for the videos has been incurred. Since Defendant failed to differentiate between the cost of the videographer and the cost of the video tapes or DVDs, then the entire amount of \$17,426.50 (this amount includes the Karagiosian videotape) should be disallowed.¹

IV. CONCLUSION

In sum, all costs related to the Steve Karagiosian deposition – \$2,810.20 should be disallowed. All videotaping costs – \$17,426.50 – should be disallowed. Thus, a total of \$18,687.70² should be disallowed.

DATED: May 18, 2011

LAW OFFICES OF RHEUBAN & GRESSEN

By: India S. Thompson
India S. Thompson
Attorneys for Plaintiff, Christopher Lee Dunn

¹Should the Court disallow both videotaping and all deposition videotaping costs, the videotaping costs excluding those pertaining to Steve Karagiosian is \$15,877.50.

²The sum of \$1,549.00 has been deducted to avoid a double tax on Steve Karagiosian's videotape.

1 **DECLARATION OF SOLOMON E. GRESSEN**

2 I, SOLOMON E. GRESSEN, declare and say:

3 1. I am a partner of the Law Offices of Rheuban & Gresen, attorneys of record for Plaintiff
4 Christopher L. Dunn in Dunn v. Burbank Police Department et al, Los Angeles Superior Court Case
5 No. BC 417928. Rheuban & Gresen are also attorneys of record for all plaintiffs in the case,
6 Rodriguez et al., v. City of Burbank et al., Los Angeles Superior Case No. BC 414602. I am
7 authorized to practice in all of the courts of the State of California. I have personal knowledge of the
8 facts asserted herein, and if called to testify, I could and would testify competently thereto.

9 2. This firm represents all of the plaintiffs in the two actions identified in Paragraph 1 of this
10 Declaration. I am the lead attorney in both cases and I am knowledgeable concerning all facts and
11 circumstances of both cases. I am personally aware of the fact that Carol Humiston is an active
12 participant in both actions. She is frequently in attendance at depositions in both cases and has been
13 the examiner in at least one deposition, that of Steve Karagiosian. Counsel for Defendant in this
14 case as well as the Rodriguez case have on more than one occasion informed me that counsel for
15 other cases are in regular communication with each other and coordinate their efforts.


16 3. Steve Karagiosian is one of the plaintiffs in the Rodriguez case. I personally defended
17 him in all three depositions of him taken in the Dunn case. There were constant objections because
18 nearly all questions centered on matters unrelated to the Dunn case, such as investigation of the
19 Porto's Bakery robbery and investigation, all of which took place after Christopher Dunn's
20 termination. His specific claims in the other action center around discrimination and harassment
21 based on his ethnicity, Armenian and denial of certain advancement opportunities, none of which
22 had anything to do with the Dunn case. Indeed the Court was forced to relocate deposition
23 proceedings to the jury room of the courtroom and the judge personally admonished counsel Carol
24 Humiston because of her questions that had nothing to do with matters pertaining to Plaintiff. In all,
25 approximately three pages of the three transcripts pertained to Christopher Dunn.

26 4. In the Rodriguez case, a dispute arose concerning the videotape of the deposition of a
27 Burbank police officer which somehow was aired on the internet. In speaking with Lawrence
28 Michaels, counsel for Defendant in the Rodriguez case, about the video and its appearance on the

1 internet, I was personally accused to releasing the videotape to someone who then published it on the
2 internet. Michaels claimed that Defendant could not have released the videotape because, Defendant
3 had decided to refrain for purchasing *any* of videotapes taken for both the Dunn case and the
4 Rodriguez case.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct.

7 Executed this 18th day of May 2011 at Encino, California.

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Solomon E. Gresen

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I am employed in the County of Los Angeles. I am over the age of eighteen and am not a party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino, California 91436.

Robert J. Tyson, Esq.
Burke, Williams & Sorensen, LLP
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Carol Ann Humiston
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XX **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. mail Postal Service in Los Angeles, California, in a sealed envelope with postage fully prepaid.

BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address listed above. My electronic notification address is dj@rglawyers.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

XX **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 19, 2011 at Encino, California.

Daphne Johnson